



as the counsel for plaintiffs in the Consolidated Actions upon whom all notices, orders, pleadings, motions, discovery and memoranda relating to the Consolidated Actions shall be served, and defendants shall effect service of papers on plaintiffs in the Consolidated Actions by serving the Chair and the Vice-Chair. Except as the Court's electronic case filing system provides service to everyone, the Chair and the Vice-Chair shall forward any notices from the Court and report upon any communications to other plaintiffs' counsel as appropriate and shall effect service of papers on other counsel by: (a) overnight mail service; (b) fax machine/telecopier; (c) hand delivery; or (d) electronic service.

**(3)** The Chair and the Vice-Chair shall have sole authority over the following matters on behalf of all plaintiffs: (a) the initiation, response, scheduling, briefing and arguing of all motions; (b) the scope, order and conduct of all discovery proceedings; (c) such work assignments to other plaintiffs' counsel as they may deem appropriate; (d) designation of which attorneys may appear at hearings; (e) the timing and substance of any settlement negotiation with any defendant; and (f) other matters concerning the prosecution of the cases.

**(4)** No motion may be initiated or filed on behalf of any plaintiff except through the Chair and Vice-Chair.

**(5)** The Chair and Vice-Chair shall have sole authority to communicate with defendants' counsel and the Court on behalf of all plaintiffs, unless that authority is expressly delegated to other counsel. Defendants may rely on all agreements made with the Chair and Vice-Chair and such agreements shall be binding to all other plaintiffs' counsel.

**B. Liaison Counsel.** The law firm of Harvey & Frank, Two City Center, P.O. Box 126, Portland, ME 04112, shall act as liaison counsel for plaintiffs and shall have the following responsibilities:

(1) to coordinate activities and tasks performed, under the supervision of the Chair and/or Vice-Chair of the Plaintiffs' Executive Committee, by the Plaintiffs' Executive Committee to facilitate the orderly and efficient prosecution of this litigation;

(2) to maintain and distribute to the Court, to counsel for the plaintiffs and to counsel for the defendants an up-to-date and comprehensive service list;

(3) to speak for plaintiffs and plaintiffs' counsel in the Consolidated Actions, under the supervision of the Chair and/or Vice-Chair of the Plaintiffs' Executive Committee and in consultation with Plaintiffs' Executive Committee, regarding pretrial proceedings, settlement negotiations, trial preparation and trial; and

(4) those duties as set forth in the Court's Order of October 7, 2003, appointing liaison counsel and in ¶ 7 of the Court's Order of July 31, 2003, governing practice and procedure in this matter, as well as those duties set forth in any subsequent order or other instruction of the Court.

**C. Plaintiffs' Executive Committee.** Plaintiffs' Executive Committee shall have the duties and responsibilities directed to them by and under the supervision of the Chair and Vice-Chair of Plaintiffs' Executive Committee to:

(1) assist in the coordination of the initiation and conduct of discovery proceedings, including requests for production of documents, written interrogatories, requests

for admissions, depositions and/or third-party subpoenas, or any other forms of discovery provided for under the Federal Rules of Civil Procedure;

(2) assist with the preparation for trial in these matters as may be required by the Chair and Vice-Chair and in such a manner as to lead to the orderly and efficient prosecution of the Consolidated Actions and to avoid duplicative or unproductive effort;

(3) make reasonable contribution of time and funds to prosecute the litigation; and

(4) perform such duties as may be necessary and appropriate for proper coordination of pretrial activities as determined by the Chair and/or Vice-Chair or as may be authorized by order of the Court.

(5) Remaining plaintiffs' counsel (those not designated as members of the Executive Committee) will have opportunity and responsibility for substantial work in the Consolidated Actions as directed by the Chair, Vice-Chair or Executive Committee.

(6) Time Records. The Chair and Vice-Chair shall be responsible for coordinating the activities of plaintiffs and their counsel during pretrial proceedings, and shall monitor the activities of co-counsel to assure that schedules are met and unnecessary expenditure of time and expenses are avoided. All plaintiffs' counsel shall keep contemporaneous time records and shall submit the records monthly to the Vice-Chair, no later than the 15th of every month following the reporting month. All plaintiffs' counsel shall submit periodic summaries of time and expense records to the Vice-Chair. No attorney fee award shall be made for time and expenses unless reports are timely filed with the Vice-Chair. Similarly, no attorney fee award will be made for time or expenses not authorized by the Chair

or Vice-Chair or for time and expenses incurred in the review of briefs or other written material unless such review is necessary for the performance of substantive work in the litigation.

2. **Defendants' Liaison Counsel.** Defendants' liaison counsel shall have the responsibilities set forth in ¶ 7 of the Court's Order of July 31, 2003, governing practice and procedure in this matter, and Order of October 7, 2003, appointing liaison counsel.

3. **Application of this Order to Subsequent Cases.** This Order shall apply to any new case that arises out of the subject matter of the Consolidated Actions and that is filed in this Court, or transferred to this Court, unless a party in such newly-filed or transferred action objects to any provision of this Order within ten (10) days of the date upon which a copy of this Order is served on counsel for such party. Such objection shall be made by filing an application for relief, and relief from this Order shall be granted only if the Court deems it appropriate to grant such application.

4. **Communication Among Counsel and Retention of Rights.** The parties and the Court recognize that cooperation by and among counsel is essential for the orderly and efficient resolution of this litigation. The communication, to the extent provided by applicable law, of information (i) among and between plaintiffs' counsel, and (ii) among and between defendants' counsel shall not be deemed a waiver of the attorney-client privilege or the protection afforded attorneys' work product, and shall not be used against any plaintiff by any defendant or against any defendant by any plaintiff. Nothing contained in this Order shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or the attorney work product doctrine.

In addition, nothing in this Order, including the participation of counsel for defendants, shall be deemed to waive or otherwise affect any argument, defense or right available to defendants, including the right to challenge the Court's jurisdiction over this matter or over any of the listed defendants.

**So ORDERED.**

**DATED THIS 17TH DAY OF NOVEMBER, 2003**

**/s/D. BROCK HORNBY**  
**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**

**U.S. DISTRICT COURT  
DISTRICT OF MAINE (PORTLAND)  
CIVIL DOCKET FOR CASE #: 03-1532 (MDL)**

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